

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FEDERAL TRADE COMMISSION,	
Plaintiff,	
v.	CIVIL ACTION NO. 04-CV 11136GAO
DIRECT MARKETING CONCEPTS, INC, et al,	
Defendants	

AFFIDAVIT OF JOHN J. MAIHOS

I, John J. Maihos, under oath declare as follows:

1. I am a member in good standing of the Society of Human Resources Management and the Northeast Human Resources Association, and hold the certification of Senior Professional of Human Resources.
2. I have been employed by Direct Marketing Concepts, Inc. since May 2, 2002. I was promoted to Vice President of Human Resources in August of 2002.
3. My duties as Vice President of Human Resources include assisting managers in the hiring, and where appropriate, the discipline and firing of employees. I work with Direct Marketing's approximately 200 employees to introduce them to the company, and ensure ongoing adherence to the company's policies and procedures.
4. One of my key roles is the initial hiring and orientation of new employees. Since we are primarily a sales company, the majority of people we hire are sales professionals. Although I typically am not involved in the day-to-day supervision of the sales floor or the sales-specific training provided by the sales managers, I do introduce people to our company and provide support for the sales managers as required.

5. As part of the introduction of candidates to our company, I generally host an Open House to explain what is entailed in the job and how we expect our sales representatives to act. There is no mistake that we hire sales professionals rather than simple order takers. I also distinguish between telemarketers and "Telephone Sales Professionals" because I want potential employees to understand that we expect nothing less than the highest professionalism when dealing with callers, co-workers, managers and themselves.

6. I distinguish between telemarketers and sales professionals because of the negative connotation that telemarketers have earned for themselves. I am clear and adamant that we do not want people who push products on customers, sell something to a person that they don't want, misrepresent our products, treat people with disrespect, or rush a caller off the phone when no order is imminent.

7. I stress the importance of the repeat customer, and that we are in business for the long term, not as a fly-by-night company. If we give people a bad opinion of our company, we won't have happy customers who are willing to call us back when another product is offered.

8. I further stress that we want people who are looking for a career in sales, someone who thinks of the job as their own business. In speaking to our employees or prospective employees, I seek to instill an attitude of personal responsibility for their success. We consistently reiterate to our sales professionals that if they are good with customers and treat them with respect, they will enjoy repeat business.

9. I encourage sales people to take the time on the phones to establish relationships with their customers. Only through these relationships does the company

have the possibility of introducing their customers to new products that we might market in the future.

10. I extol the compassionate, understanding, patient and professional sales representative, and condemn the disinterested, rude and unprofessional person. I even go so far as to have people characterize a person they look up to, someone who is their role model. The purpose is to discuss the attitudes of a successful person in life; not necessarily someone who has monetary success, but instead someone who is a leader, mentor and guide through life.

11. I tell candidates that we will train them for 10-20 hours for a phone call that may last 5-8 minutes. In our experience, only a very well trained sales professional will handle customer calls with the respect and professionalism that we expect.

12. Attitudes that are offered by candidates are always similar. Candidates look up to people who are honest, charismatic, intelligent, caring, charitable, committed, have integrity, open, hard working, persistent, disciplined, friendly, encouraging, motivated, have values, are dependable, and other traits along this line. This is the kind of person we seek to hire. The exercise shows the value of the good behaviors.

13. We have scripts for all our products, and I explain why they are to follow them. Scripts are used to ensure that everyone is saying the same things. I go so far as to tell them that we receive test calls from various agencies, and that they might get one. It's critical for them to always properly represent our products and our company.

14. I tell potential employees that they won't maximize their earnings potential if they just see dollar signs on people's foreheads. We don't want that kind of person working for us.

15. After we hire candidates, our sales managers walk each candidate through the training process, and I eventually meet with them again to review our company policies, procedures and benefits. Everyone is required to go through a new-employee orientation and sign off an Employee Acknowledgement. (**Exhibit 1, Handbook, at p.**

17 {hereinafter “HB”})

16. I review each page of our handbook and stress certain elements; I ask them to fully read the book on their own. (**HB**)

17. I stress parts of our Mission Statement that talks about “maintaining the highest levels of integrity, honesty and professional business ethics.” (**HB p.5**)

18. Our first policy is “Customer Service,” and I remind each candidate that they are to value our customers because they are the most important thing we have, and we want them to come back to us in the future. (**HB p.7**)

19. I use a bit of humor to make certain points. I ask for a show of hands for anyone who is a doctor, and I specify an M.D., not a Ph.D. Of course, no one ever raises their hand. I make sure that everyone knows that there are no doctors present and then I get serious. I stress that we are not doctors and therefore are never to imply that we are; we don’t treat, cure, guarantee or prescribe anything (except possibly our shipping.) (**HB p. 8**)

20. Dress and appearance is also reviewed. We require professional dress on our sales floor, and that includes shirt and tie for the men. Similar professional dress is required for women. I often repeat that we strive to instill an attitude of professionalism, and that dress is one key factor. (**HB p.9**)

21. I educate each employee about confidentiality of customer's personal information including addresses, phone numbers and credit card information. **(HB p.9)**
We have never had a problem any privacy or similar customer information issues, which we take very seriously.

22. I talk about public relations and how what they do on the telephone will have an impact on our business. **(HB p.10)**

23. Also as part of our new employee orientation I talk about call monitoring, and that they will be overseen and monitored by sales managers and our new Quality Control department. We will use tapes to coach and counsel employees, and issue reprimands as appropriate. I also tell them that we use the Contract Genie system as a quality control tool. **(HB p.10)**

24. Termination of employment is also reviewed. I am clear that we will discipline and fire employees who are dishonest, among other things. **(HB p.12)**

25. After our initial training and orientation are complete, I may interact with an employee for performance issues. That interaction comes from a variety of sources.

26. When an employee is monitored by Quality Control, I receive a written report of the representative, the invoice number, Contract Genie number, and a brief description of the concern. That can range from a sales representative not fully reconfirming an order during the recorded portion of the call, to an incomplete explanation of our autoship program.

27. When we first began the program, and sometimes with new representatives, we discover blank recordings. This was found to be a training issue. Representatives were inadvertently hitting the "line" button instead of the "Cnf/Trn"

button, thus disconnecting the recording service before the call was in conference. We have made significant efforts to correct this problem.

28. Sales representatives are regularly directed to review the proper recording instructions on our Intranet. (**Exhibit 2**)

29. I invite the sales representative into my office and show them the order on the computer screen. I then ask them to explain to me the way the recording should have been made. I then play back their Contract Genie recording and point out any discrepancies. I then write a warning report and have them sign off on it.

30. In addition, when issues arise, I point out the four major portions of the Contract Genie script and tell the sales representative that he or she needs to follow the script. That script requires the sales representative to 1) recap the order, 2) explain the autoship program (including terminology to specifically convey that this is a reoccurring shipment along with the cost), 3) get affirmation that the customer wants the order and agrees to the terms, and 4) inform them of the procedures to cancel the program at any time.

31. I also direct each sales representative to the script on our Intranet for recording order confirmations. (**Exhibit 3**)

32. Over the last year, I have issued numerous written warnings to sales representatives. These warnings seek to drive home the point of properly recording the Contract Genie. Many of these issues are identified by Quality Control. Even though the customer hasn't complained in most if not all of these situations, we address the issue immediately to be sure we don't have an order that will create a customer service problem. Attached are examples of the most recent written warnings. (**Exhibit 4**)

33. When I receive positive comments from our Quality Control department, I also tell the sales representatives, and I try to do this in front of their peers. Through positive reinforcement of the "right" way to do a recording, we expect to reduce any future problems that will lead to future reprimands.

34. To further ensure compliance and professionalism, any sales representative who does not meet with a quality control person, sales supervisor, or myself, within a working day of receipt of a notice, has their access removed so orders cannot be placed.

35. Access is restored *only* after retraining is completed.

36. As part of my regular duties, I sometimes walk the floor, and if I hear something that isn't consistent with company policy or the instructions and scripts, I confront the sales representative about the issue, ask for the reason they went off script, and reinforce the correct way to handle problems and/or questions.

37. Sales managers generally deal with ongoing coaching and counseling meetings. We have divided the sales floor into four teams, and each team has a manager in charge.

38. Written sales counseling forms are given to the sales representatives.

(Exhibit 5)

39. Other performance problems are also documented, including missing mandatory management meetings, absenteeism from work, dress code violations, improper conduct with other employees, and similar matters.

40. I have reviewed the FTC's statements regarding the company's sales floor and I disagree with the FTC's characterizations. Contrary to the FTC's allegations, the

company has undertaken extraordinary efforts to improve the quality of the sales floor and the training of employees. The company identifies issues as they occur and takes appropriate action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 6th day of June, 2005 in Beverly, Massachusetts.



JOHN J. MAIHOS